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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re Marriage of PETER and STEPHANIE
VEGLIA.

B263007

(Los Angeles County
Super. Ct. No. LD067159)

PETER VEGLIA,

Respondent,

v.

STEPHANIE VEGLIA,

Respondent;

DORIAN GILES,

Claimant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Virginia
Keeny, Judge. Affirmed.

Law Office of Melissa D. McNair and Melissa D. McNair for Claimant and
Appellant.

Lizarraga Law, Rebecca D. Lizarraga, for Respondent Peter Veglia.

Stephanie Veglia, in pro. per., for Respondent Stephanie Veglia.

Claimant Dorian Giles (Giles) appeals the family law court’s order denying his motion to join the marriage dissolution proceedings of respondents Stephanie Veglia and Peter Veglia (respondents).¹ Giles sought to join the proceedings to obtain an order granting him custody or visitation rights for a minor son (the minor) he claims to have fathered with Stephanie during her marriage to Peter. Respondents opposed Giles’s joinder request, pointing to prior 2010 court proceedings in which a court determined Peter, not Giles, was the minor’s presumed father. We consider whether, based on the record before us, Giles has carried his burden to demonstrate the family law court erred in finding his joinder motion barred by res judicata.

I. BACKGROUND

Respondents married in 2001, and during the marriage, Stephanie had two children, including the minor that is the subject of this appeal. Peter is listed as the father on the minor’s birth certificate.

In January 2014, respondents commenced marital dissolution proceedings in this case. Later that same year, Peter was awarded sole legal and physical custody of the minor in a dependency court proceeding.

While marriage dissolution proceedings were ongoing, Giles filed a motion for joinder so he could be included in any custody and visitation orders made concerning the minor. In the declaration with his notice of motion, Giles averred that the minor is his biological child and Giles asserted he had been a “constant presence in [the minor’s] life and ha[d] shared financially in caring for him.” Giles asserted joinder should be granted because he was the minor’s presumed father: “As the presumptive father, pursuant to Family Code² section 7611, I should be joined in this matter so that the Court may

¹ Because Stephanie and Peter Veglia share the same last name, we refer to them by their first names for clarity.

² All undesignated statutory references that follow are to the Family Code.

determine my rights to custody and visitation.” A memorandum of points and authorities filed with Giles’s notice of motion and declaration cited no additional legal authority in support of his position, other than the general joinder rule. (Cal. Rules of Court, rule 5.24.)

Giles’s declaration also revealed, however, that there had been prior family law proceedings involving his claim to paternity of the minor. He stated: “In or about 2010, LASC No. LF005101, I filed a Petition to Establish Parental Relationship to gain rights to my son when I became worried about [Stephanie’s] ability to parent [the minor] effectively. . . . [Stephanie] filed a motion to quash citing the marital presumption of paternity and the Court quashed my Petition. Nonetheless, [Stephanie] continued to allow me to be a part of [the minor’s] life, granting me regular visitation, with [Peter’s] knowledge. It would be detrimental to [the minor] if this Court made orders for custody and visitation, which did not include me. It is in [the minor’s] best interest that he be permitted to maintain a relationship with his biological father.”

Both respondents opposed Giles’s joinder motion. In a declaration and memorandum of points and authorities, Peter argued Giles’s request for joinder should be barred “based upon the doctrine of res judicata and collateral estoppel.” Peter stated, as Giles had conceded, that Giles filed in 2010 a Petition to Establish Parental Relationship claiming parentage rights for the minor (the Prior Parentage Proceeding).³ According to Peter, Giles requested an order for genetic testing during that proceeding, and at a contested hearing on June 15, 2010, the court denied Giles’s petition and the request for genetic testing on the ground that Peter was the minor’s presumed father. Peter argued Giles’s attempt to join the proceedings in this case would accordingly be for the purpose of presenting the exact claim he lost four years earlier, which should be barred by the

³ With his responsive declaration opposing joinder, Peter filed a notice of related case form listing the caption and case number for the Prior Parentage Proceeding: *Dorian Giles v. Stephanie Lynn Veglia*, Los Angeles County Superior Court case number LF005101. There are no documents or transcripts from this Prior Parentage Proceeding in the record on appeal.

“issue-preclusive aspect of res judicata.” In addition, declarations from Peter and Stephanie attested to their involvement in the minor’s upbringing and the corresponding lack of involvement by Giles, despite the claims to the contrary in his declaration.

The family law court held a hearing to decide Giles’s joinder motion, at which all parties (Giles, with counsel; Peter, with counsel; and Stephanie, in propria persona) were present. The court informed the parties its tentative decision was to deny the motion for joinder as barred by the principles of res judicata, namely the court’s determination in the Prior Parentage Proceeding that “estopped” Giles from re-litigating “the issue of whether or not he can assert paternity rights in this case.”

Giles argued res judicata did not apply because he was seeking custody and visitation rights in this case whereas the Prior Parentage Proceeding involved issues of paternity and DNA testing. The court pressed Giles to explain the theory under which he could assert custody rights if he had no rights as a presumed father or biological father. Giles’s attorney argued, “Well, Your Honor, at this point Mr. Giles has been held out as the child’s father. It has been known to Mr. Giles. It’s known to all the parties that [the minor] is in fact Mr. Giles’ son.” Giles’s lawyer continued, arguing Giles had a relationship with the minor and stated he would be “requesting visitation rights whether as a third party—he understands that he does not have any standing to seek paternity of this child—but he does have standing to be seeking visitation rights . . . as a party who has been a consistent presence in his life as well as the child’s biological father if not legal father.”

Peter argued the request for joinder should be denied because Giles was attempting to change the nature of his request. Peter explained that the request as made in Giles’s motion, referring to Family Code section 7611,⁴ was the same argument based on presumptive father status that the court resolved against him in the Prior Parentage

⁴ This section of the Family Code, which governs the establishment of the parent-child relationship, describes the circumstances under which a person is presumed to be the natural parent of a child.

Proceeding. Peter then read into the record the following portion of what he represented to be the court's ruling in the Prior Parentage Proceeding: "Petitioner does not qualify as a presumptive father under Family Code section 7611[.] [U]nless the father and birth mother are married to each other, a man cannot be a presumed father unless he receives the child into his home and openly holds the child out as a natural child. The court finds the petitioner has not received the child into his home, and finds the petitioner has not openly held out the child as his natural child."

After hearing argument, the court stated it was even more convinced its tentative ruling was correct. The court explained it believed it was precluded as a matter of law from considering Giles's argument that he should be deemed a presumptive father or have custodial rights with respect to the minor because of the ruling in the Prior Parentage Proceeding. The court acknowledged a third party could have custody rights under certain circumstances, but the court maintained the issue had been ruled on in the Prior Parentage Proceeding, which decided Giles had no standing to assert paternity rights. The court therefore denied Giles's request for joinder, and Giles now appeals.

II. DISCUSSION

Giles argues "res judicata," which we will discuss herein using the more precise terminology of issue preclusion or claim preclusion,⁵ should not bar his motion to join these dissolution proceedings because the Prior Parentage Proceeding did not address issues of custody or visitation, and as a result he remains entitled to assert claims under Family Code sections 3100 and 3040.

In an order issued prior to briefing, we asked the parties to discuss whether Giles's failure to provide the reporter's transcript and "most of the relevant papers" from the Prior Parentage Proceeding warranted affirmance of the family law court's order based on the inadequacy of the record. Peter argues we should affirm on that basis and, in any event, because the basis for Giles's joinder request in this case was litigated and decided

⁵ *DKN Holdings LLC v. Faerber* (2015) 61 Cal.4th 813, 823 (*DKN Holdings*).

against him in the Prior Parentage Proceeding. We agree the record is inadequate to establish error.

The family law court denied Giles's joinder motion on "res judicata" grounds, and we understand that reference to invoke the doctrine of issue preclusion. That doctrine prevents a party to a prior proceeding from re-litigating in a later proceeding issues actually argued and decided against the party in the prior proceeding. (*DKN Holdings, supra*, 61 Cal.4th at pp. 824-825; *Mycogen Corp. v. Monsanto Co.* (2002) 28 Cal.4th 888, 896.) In other words, issue preclusion applies "(1) after final adjudication (2) of an identical issue (3) actually litigated and necessarily decided in the first suit and (4) asserted against one who was a party in the first suit or one in privity with that party." (*DKN Holdings, supra*, 61 Cal.4th at p. 825.)

On the record before us, we have no ability to conclusively determine what issues were in fact litigated and finally decided in the Prior Parentage Proceeding. The record does not include any transcripts of hearings held in the Prior Parentage Proceeding, nor any papers filed by the parties in that proceeding. Under well-established authority, we must presume the family law court's decision is correct, and Giles has the burden to demonstrate error by an adequate record. (*Hearn v. Howard* (2009) 177 Cal.App.4th 1193, 1200 [appellant has burden to furnish adequate record for review; where reporter's transcript missing, appellate court presumes what occurred at hearing supports judgment]; see also *Denham v. Superior Court* (1970) 2 Cal.3d 557, 564 [""A judgment or order of the lower court is *presumed correct*. All intendments and presumptions are indulged to support it on matters as to which the record is silent, and error must be affirmatively shown. . . . [Citations.]""]; *In re Marriage of Wilcox* (2004) 124 Cal.App.4th 492, 498-499.) Giles has not done so, and we must affirm for that reason.⁶

⁶ Giles argues he has provided all the materials that the family law court considered in this case, reasoning that the court's statement "I don't" when asked during the hearing whether it had a copy of the finding of order after hearing and transcript in the Prior Parentage Proceeding indicates the court considered no other information about that proceeding. Even if Giles is correct that this demonstrates the court considered no such

DISPOSITION

The order of the superior court is affirmed. Respondents shall recover their costs on appeal.

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BAKER, J.

We Concur:

TURNER, P.J.

KRIEGLER, J.

information (as opposed to demonstrating merely that the family law judge did not have a copy on the bench at the hearing), it is still Giles's burden to show the court's ruling is in fact erroneous. Without more information as to what was litigated in the Prior Parentage Proceeding, Giles necessarily falls short of the mark. Giles's opening brief stated he "will seek this court to take judicial notice" of the Prior Parentage Proceeding, but no such request for judicial notice has been made nor has he otherwise provided us with any of the documents filed in that proceeding.